

REMARKS

Status of the Claims

Claims 15 – 21, and 23 – 27 are pending. Claims 1 – 14 and 22 are canceled. No claims are withdrawn from consideration.

Claim Amendments

The amendments to the claims do not add new matter. The claim amendments are made without prejudice, and without disclaimer of the canceled and/or modified subject matter. Indeed, “[t]he language in the ... claims may not capture every nuance of the invention or describe with complete precision the range of its novelty.”¹ Thus, “[t]he scope of [the present claims] is not limited to [their] literal terms but instead embraces all equivalents to the claims described.”²

Claims 15 and 26 have been amended to indicate the core of the preparation has at least two separate phases. This amendment finds support throughout the specification, for example, on page 3, line 5. Claims 19, 20, and 21 have been rewritten in independent form. The other amendments are made to put the claims in better form.

Claim Rejections

- I. The Office action rejects claims 15 – 18 and 23 – 27, citing 35 U.S.C. §103(a); EP 0 717 989 to Vallet Mas et al. (hereinafter, “Vallet Mas”); and US 5,225,279 to Redlich et al. (hereinafter, “Redlich”).

On page 11 of the decision mailed August 18, 2009, The Board of Patent Appeals and Interferences (hereinafter, “BPAI”) indicated appellants arguments regarding claims 16 and 17 were persuasive. The BPAI noted Claims 16 and 17 require that the core has at least two separate phases. Claims 15 and 26 have been amended to indicate the core of the preparation has at least two separate phases.

¹ *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co., Ltd.*, 535 U.S. 722, 731, 122 S.Ct. 1831, 1837 (2002).

² *Festo*, 535 U.S. at 731, 122 S.Ct. at 1837.

- II. Claims 19 and 20, citing 35 U.S.C. §103(a); Vallet Mas; and US 6,068,857 to Weitshies et al. (hereinafter, "Weitshies").

On page 14 of the decision mailed August 18, 2009, the BPAI reversed this rejection. Claims 19 and 20 have been rewritten in independent form.

- III. Claim 21, citing 35 U.S.C. §103(a); Vallet Mas; and US 6,045,829 to Liversidge et al. (hereinafter, "Liversidge").

On page 15 of the decision mailed August 18, 2009, the BPAI reversed this rejection. Claim 21 has been rewritten in independent form.

Fee Authorization

The Director is hereby authorized to charge any deficiency in fees filed, asserted to be filed, or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Deposit Account 14-1437. Please credit any excess fees to such account.

Conclusion

The present application is in condition for allowance, and applicants respectfully request favorable action. In order to facilitate the resolution of any questions, the Examiner is welcome to contact the undersigned by phone.

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